IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

Bail Appl..No. 6736 of 2007()

CRIME NO.598/07 OF KOTTIYAM POLICE STATION

PETITIONERS : ACCUSED NOS. 1 & 2:

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1. ANIL SWAROOP, S/O.ASHOKAN,
KANNWASRAMAM, PATTATHANAM P.O.,
VADAKKEVILA VILLAGE, KOLLAM.

2. ANIL KUMAR, S/O.SAHADEVAN,
THOPPIL VEEDU, KOTTAKKAKAM WARD,
KOLLAM WEST VILLAGE, KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY
SUB INSPECTOR OF POLICE, THE KOTTIYAM POLICE
STATION THROUGH THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6736 of 2007

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Dated this the 23rd day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations for offences punishable, inter alia, under Section 420 r/w. 511 I.P.C. and Section 5 of the Explosive Substances Act.

2. The Superintendent of Police allegedly received discreet information that fraudulent dealings in gas cylinders is going on in a certain premises. The police party was sent to verify the information and take necessary action. When they reached the shed in question, they found that the third accused was present there. There were number of gas cylinders. All of them had become empty by then. Certain implements, which were used for filling gas cylinders, were seized. Enquiry revealed that the petitioners are the persons who took the premises on lease from the landlady. Investigation revealed that gas cylinders used to be brought and taken out of the said premises. On the reasonable belief that emptying and filling is

taking place in the premises in question and that explosive substances were dealt with contrary to the provisions of the Explosive Substances Act and relevant rules, the F.I.R. was registered. Investigation is in progress. The third accused has already been arrested and released. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that in any view of the matter there can be no valid allegation of cheating or attempt to commit the offence of cheating. He further submits that as all cylinders were found to be empty, there could not be any allegation of violation of Explosive Substances Act. The counsel prays that the petitioners may be saved of the undeserved trauma of arrest and detention. They have the requisite licence from the non-governmental Gas Agency to run the business as their agents, submit the counsel.

4. The learned Prosecutor opposes the application. He submits that all the available indications do suggest that the petitioners were indulging in the objectionable acts of cheating and violation of the provisions of the Explosive Substances Act. The gas cylinders of

Government companies were also found in big number in the premises. There is no explanation whatsoever for possession of such gas cylinders in the shed by the petitioners. The learned Prosecutor submits that the investigation reveals that the activity of emptying such gas cylinders of governmental companies and filling L.P.G. in gas cylinders of private companies was going on in the premises contrary to the provisions of the Explosive Substances Act. This was obviously being done to fraudulently deceive the customers, it is submitted. The learned Prosecutor, in these circumstances, submits that the petitioners may not be permitted to arm themselves with an order of anticipatory bail. They may be directed to appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary and normal course.

5. I have considered all the relevant inputs. The case diary was placed before me for my perusal. I find merit in the opposition by the learned Prosecutor. There are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioners. This I am

satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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